

In re) Fair Hearing No. 15,552
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare to recoup overpaid benefits from her ANFC benefits at a rate of ten percent per month.

1. The facts in this matter are undisputed. The petitioner and her five month old son live in an apartment building in which the mailboxes had been vandalized and she was unable to receive mail at her address for some weeks while a renovation was in progress. All mail sent to her by the Department was returned to the local district office.

2. Pursuant to Departmental policy regarding cases where mail is returned as undeliverable, the petitioner's case was closed by her worker in mid April. The letter notifying her of this fact was also returned to the district office by the postal service.

3. Because she had not received her welfare benefits, the petitioner came to the district office on April 27 and was given her mail, including a benefits check. Her case was reinstated by the worker. The petitioner usually gets two ANFC checks, one for 60% of the amount on the first of the month and one for 40% on the sixteenth. However, when a

case is reinstated, both checks are sent at the beginning of the month, although not from the same place. One comes from the local district office and one is mailed from the central office in Waterbury.

4. On the sixteenth of May, the petitioner called to say that she had not received her second check for the month. The worker explained that she should have gotten two checks at the beginning of the month. The petitioner did not recall getting the check from Waterbury and a replacement check was issued and a stop payment order was placed on the earlier issued check. When that order was placed on the check by the state office in Waterbury, it was discovered that the check had been cashed and that the endorsement signature was the petitioner's.

5. The petitioner was shown the check and agreed that it was her signature. In retrospect she said that she was confused because of the pile of mail and checks as to what she had actually received, an explanation which the Department has accepted as probable. The petitioner agrees that she received and spent \$203 to which she was not entitled through an innocent error.

6. The Department notified the petitioner on June 15, 1998, that \$50 would be deducted from her \$508 per month ANFC check each month until the \$203 was recovered. The petitioner appealed that decision.¹

¹ Although the Department agrees that the petitioner

7. The petitioner asks for a reduction of the amount recouped from her because it is a hardship to have so much taken at once. She pays \$425 per month for a two room attic apartment, a rent which she considers to be among the cheapest in her city and must pay for utilities and buy diapers for her child. She is looking for a job and is trying to get back on her feet following the catastrophe which ensued when her husband abandoned her shortly before the birth of their son.

ORDER

The decision of the Department to recoup 10% each month from the petitioner's ANFC grant is affirmed.

REASONS

The regulations governing the ANFC program require that "[o]verpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment." W.A.M. § 2234.2. The only exception to this recoupment requirement is for amounts less than \$35.00 and for overpayments which

appealed the proposed reduction in time to prevent the recoupment from taking place until after the matter was resolved by fair hearing, the recoupment began anyway. The Department agreed to restore the already recouped amounts and to forbear further recoupment during the pendency of this appeal.

occurred more than twelve months before the date of recovery, if no fraud is involved. Id. Recovery can be made either by direct payment or by reducing the amount of payment being received by the ANFC group of the overpaid person.

The issue here is not whether the overpayment must be recovered but whether the rate of recovery is correct. The regulation is very specific about the rate of recovery which varies only based on whether the overpayment occurred due to Departmental error:

. . . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and ANFC payments so long as the assistance unit retains from its combined income 90 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no other income, the amount of the recoupment will equal 10 percent of the grant amount.

If, however, the overpayment results from Department error or oversight, the assistance unit must retain from its combined income 95 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no other income, the amount of the recoupment will equal 5 percent of the grant amount.

. . . .

W.A.M. § 2234.2

The facts here do not support a finding that the petitioner was overpaid through any error of the Department.

By her own admission, the error occurred due to her own confusion about what money she had and had not received.

There is no evidence that the Department did anything to add to that confusion. It must be concluded, therefore, that the Department was correct in assessing a ten percent recoupment (\$50) from her grant amount (\$508) since the petitioner's sole source of income is ANFC.

There can be no doubt that the \$50 per month recoupment will pose a hardship for the petitioner who, like all ANFC recipients, is on a very tight budget. The petitioner should be aware that if she is unable to purchase essentials or faces a utility termination while she is repaying the ANFC benefits she can apply for help through the General Assistance program.

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